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**FISCAL IMPACT STATEMENT**

**LS 6627**

**BILL NUMBER:** SB 425

**NOTE PREPARED:** Jan 3, 2013

**BILL AMENDED:**

**SUBJECT:** Bail.

**FIRST AUTHOR:** Sen. Rogers

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill has the following provisions:

*Bail Expiration:* The bill provides that an undertaking for bail does not expire 36 months after it is posted for the release of a defendant from custody if the defendant remains a fugitive after the 36-month period.

*Electronic Mail:* The bill requires sureties and bail agents to establish and maintain electronic mail addresses before June 1, 2013. It provides that if a defendant does not appear as provided in a bond and the court orders the bail agent and the surety to surrender the defendant to the court, the clerk may send notice of the order by electronic mail to the bail agent and surety.

*Time Period:* The bill reduces the amount of time, from 365 days to 180 days, by which a surety and bail agent must produce a defendant or provide a valid reason for the defendant's failure to appear. It changes the period of time used to assess late surrender fees against a surety and bail agent.

*Late Surrender Fee:* The bill specifies that the late surrender fee is equal to 80% of the face value of the bond.

*Costs:* It also provides that costs resulting from a defendant's failure to appear may not be assessed against a bail agent or surety.

*Allocation of Late Surrender Fee:* The bill specifies that late surrender fees collected by a court in which a bond was posted must be used as follows:

- (1) Twenty-five percent of the fees must be retained by the court to defray the costs of

operating the court, defray the costs of operating diversion programs, and defray the costs of extraditing criminal defendants by depositing some or all of the fees in the county extradition fund.

(2) Twenty-five percent of the fees must be deposited in the county electronic monitoring fund to defray the costs of operating electronic monitoring programs that involve indigent offenders.

(3) Twenty-five percent of the fees must be retained by the court to defray the costs of operating the court.

(4) Twenty-five percent of the fees must be deposited in the county general fund and dedicated to the maintenance of the jail in the county.

It removes a provision that requires 50% of the late surrender fees to be deposited in police pension trust funds.

*County Electronic Monitoring Fund:* The bill establishes a county electronic monitoring fund in each county.

*Conforming Amendments:* It makes conforming amendments.

**Effective Date:** Upon passage; July 1, 2013.

**Summary of NET State Impact:** The bill is expected to have minimal cost and revenue changes to the state as the result of shortening the time period to assess late surrender fees.

**Explanation of State Expenditures:** *Time Period:* The reduction in time to produce a defendant or provide a valid reason for the defendant's failure to appear and to assess late surrender fees against a surety and bail agent could increase caseload for the Department of Insurance. The Department of Insurance is notified by the courts when a surety or bond agent fails to pay a forfeiture and its Bail Bonds Division works to collect the fees. Any increase in caseload is expected to be minimal and to mitigate after the initial change.

**Explanation of State Revenues:** *Time Period:* All forfeitures of bail bonds are deposited in the Common School Fund. There are no data available to determine if the annual number of forfeitures would change given the reduction from 365 days to 180 days for the bond to be declared forfeited.

*Background:* Based on late surrender fees collected by county and municipal courts, it is estimated that the Common School Fund receives between \$678,000 and \$2.7 M a year in bail bond forfeitures. All fines and forfeitures are placed in the Common School Fund, and in FY 2011, the fund received a total of \$5.6 M in forfeiture revenue for all fines and forfeitures.

**Summary of NET Local Impact:** Changes in timing, fee rates, and notification methods in the bill will likely increase revenues and reduce costs for courts and local units. However, the bill redistributes the revenue from the late surrender fee, which will affect several funds, including the Sheriff's Pension Fund. The bill creates a county electronic monitoring fund to defray the costs incurred to operate electronic monitoring programs that involve indigents and directs some of the late surrender fee to this fund.

**Explanation of Local Expenditures:** *Email Addresses:* Requiring surety and bail agents to establish and maintain email addresses with the clerk of the court should reduce the costs of notification for the clerk. The county general fund would save money from both stationery and postage if notices could be sent by email.

**Explanation of Local Revenues:** *Late Surrender Fee and Time Period:* The bill could increase revenue from the late surrender fees if the percentage of the face value of a bail bond to be assessed increases and if reducing the period of time before a fee may be assessed results in more collections of the fee. Using a midpoint assessment rate of 40% to calculate the face value of forfeited bail bonds, it is estimated that late surrender fee revenue could double to about \$1.1 M per year and that using the minimum assessment rate of 20%, the maximum revenue increase is about \$1.6 M per year. This estimate is based on reported revenues from the late surrender fee from the 18 counties that had late surrender fee revenues in 2011. No estimate was made for other courts that may impose a late surrender fee but had no revenue in 2011.

*Allocation of Late Surrender Fee:* The bill will also change the distribution of the late surrender fee as detailed in the table below. It prohibits the court from assessing costs resulting from a defendant's failure to appear. However, the reallocation of the late surrender fee and an increase in the late surrender fee may offset any losses from the removal of the court costs.

<b><i>Current Law Distribution of Late Surrender Fees</i></b>	
<b><u>Recipient</u></b>	<b><u>Portion of Fee</u></b>
Police Pension Trust Fund (Sheriff's Pension)	50%
County Extradition Fund	50%
<b><i>Proposed Distribution of Late Surrender Fees</i></b>	
<b><u>Recipient</u></b>	<b><u>Portion of Fee</u></b>
Retained by the Court for Court Operations; Diversion Program Operations; or Extraditing Criminal Defendants	25%
County Electronic Monitoring Fund*	25%
Retained by Court for Court Operations	25%
County General Fund for Jail Maintenance	25%

\*The county electronic monitoring fund is established in each county under the bill.

**Background and Additional Information:**

*Bail Bonds - General:* Persons who are charged with a crime and await trial have a constitutional right to be released if they will not be a threat to public safety. Bail bond agents assume the risk of ensuring that the defendant appears for trial for a fee charged to the defendant. Indiana law includes conditions for bail bond agents to produce a defendant for court appearances when the court notifies the agent.

Under current law, the bail agent or surety must produce the defendant within 365 days or prove that the appearance of the defendant was prevented for one of four allowed reasons. The following table shows the statutory time to produce the defendant, the fee, and the total collections in 2011.

### Late Surrender Fee Assessment

<i>Current Law</i>		
<u>Time Period</u>	<u>Fee as % of Bail Bond Face Value</u>	<u>Total Collection in 2011</u>
Between 120 and 180 days	20%	\$542,625 in 18 counties
Between 181 and 210 days	30%	
Between 211 and 240 days	50%	
Between 241 and 365 days or more	80%	

Source: IC 27-10-2-12; Office of the Court Administrator, *Court Management Statistics 2011*.

*Method Used to Calculate Potential Surrender Fee Assessments:* Using the total collections in 2011 of \$542,625, and the range of fee rates, it was estimated that the face value of the bail bonds that were forfeited in 2011 ranged between \$678,282 (80%) and \$2,713,127 (20%), with the midpoint face value being \$1,356,563 (40%). If the current collections occur in the 80% time period, there would be no change under the bill, and if they represent collection in the 20% range, the increase in fee revenue would be the maximum increase of \$1.6 M. The 40% midpoint is related to a \$542,625 increase in revenue, or doubling of the current collections.

There were revenues from the late surrender fee reported from 18 counties in 2011. On average, these counties received \$30,145 in revenue from the late surrender fee, ranging from \$175 to \$188,900. No estimate was made for counties that did not receive a late surrender fee in 2011. It has been reported that several counties do not allow bail bonds, but rather only accept cash bonds for bail.

*Police Pension Trust Fund (Sheriff's Pension):* Each county has the option of establishing a separate sheriff's pension trust. In addition to receiving revenue from the late surrender fee, a sheriff's pension trust receives:

- (1) the fee collected by the county sheriff for service of process for a civil action filed outside Indiana; and
- (2) \$13 for each service of a writ, an order, a process, a notice, a tax warrant, or other paper completed and verified by the sheriff of the county.

*County Extradition Fund:* There are 44 counties with county extradition funds based on the 2011 Annual Report data. The average ending fund balance on June 30, 2011, was \$35,400.

**State Agencies Affected:** Department of Insurance.

**Local Agencies Affected:** Courts; counties.

**Information Sources:** <https://gateway.ifionline.org/public/download.aspx> accessed on 11/6/2012; *Indiana Pension Handbook*, December 2011; Auditor's Data; Robert L. Hummel, Department of Insurance, 317-232-5063; Division of State Court Administration, *2011 Indiana Trial Court Statistics*; <http://issuu.com/incourts/docs/2011-yearinreview?mode=window&backgroundColor=%23222222>.

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